IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY THIRD DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 5632 of 2005

Between:

N. Hanumaiah, S/o Ranganayakulu,
R/o Valetivaripalem Village, Ongole Mandal, Prakasam District.

..... PETITIONER

AND

1 The Assistant Commissioner, Provident Fund, Sub Regional Office, 3rd Lane, Krishna Nagar, Guntur, Guntur District.
2 The Regional Provident Fund Commissioner, Barkatpuram, Hyderabad.
3 The Commissioner, Employees Provident Fund, Mayur Bhawan, Cannaught Circus, New Delhi.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus, declaring the impugned order dated 23-9-2004 bearing No. AP/39875/7A/SRO/GNT/PRMI/Comp.III/04/1147 and consequential order dated 19-1-2005 bearing No,./AP/39875/7A/SRO/GNY/Recovery Cell/C.III/2005/2384 issued by the respondent as illegal, void unenforceable, unconstitutional and ultra vires of the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, and to pass such other order or orders as this Hon'ble Court deem fit and proper in the circumstances of the case.

Counsel for the Petitioner : SMT. JYOTHI ESWAR GOGINENI

Counsel for the Respondents : MR.R.N.REDDY

The Court at the stage of admission made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.5632 OF 2005

ORDER :

This writ petition is filed seeking a declaration that the proceedings of the 1st respondent dated 23-09-2004 as well as the consequential order dated 19-01-2005 as arbitrary, illegal and ultra vires the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short, 'the Act').

A perusal of the impugned proceedings dated 23-09-2004 shows that the establishment known as M/s. Suman Bricks which has been covered under the provisions of the Act and the Schemes framed thereunder has failed to submit the returns as required under the Schemes for the period from 4/2002 to 6/2004 and that the establishment has also not remitted the Employees' Provident Fund and other contributions for the abovesaid period and therefore the employer was summoned to appear before the 1st respondent on 16-08-2004 under Section 7-A of the Act and to

represent his case. However, the employer failed to appear and consequently on the basis of the material on record, under the impugned proceedings it was determined that the employer is liable to remit a sum of Rs.29,156-40 ps towards the PF contributions together with interest thereon and accordingly the employer was called upon to pay the said amount within seven days. Since the employer failed to pay the arrears of the amount as determined in the proceedings dated 23-09-2004 and as per the Certificate dated 30-12-2004, the 1st respondent who is also the Recovery Officer issued a notice dated 19-01-2005 calling upon the writ petitioner who was described as Proprietor of M/s. Suman Bricks, to appear before the Recovery Officer on 3-2-2005 and to show-cause as to why he should not be committed to the civil prison in execution of the said Certificate. The said action of the respondents is under challenge in this writ petition contending inter alia that no prior notice was issued at any point of time before passing the proceedings dated 23-09-2004. It is also contended that the petitioner cannot be made liable under the impugned proceedings since the provisions of the Act are not at all attracted. However, the petitioner does not dispute that the impugned proceedings dated 23-09-2004 were served on him and states that thereafter he filed an application before the 1st respondent under Section 7-A(4) of the Act to set aside the order dated 23-09-2004. It is pleaded that the said application is still pending and therefore the respondents are not justified in taking coercive steps for detaining the petitioner in the civil prison under the consequential order dated 19-1-2005.

I have heard the learned Counsel for the Petitioner as well as Sri R.N. Reddy, the learned Standing Counsel appearing for the respondents.

Whether the provisions of the Act are applicable to the case on hand or whether the petitioner was served any prior notice before passing the impugned proceedings dated 23-09-2004 or whether there was any sufficient cause for non-appearance of the petitioner before the 1st respondent are all the questions to be enquired into after affording due opportunity to both the parties. It is neither possible nor permissible for this Court to enter into such an enquiry into the disputed questions of fact. Since the petitioner states that he has already made an application under Section 7-A(4) of the Act to set aside the order dated 23-09-2004, I am not inclined to express any opinion

on merits, but it would be appropriate to leave it open to the 1st respondent to consider the said explanation said to have been filed by the petitioner.

Accordingly, without expressing any opinion on merits, the Writ Petition is disposed of with a direction to consider the application filed by the petitioner under Section 7-A(4) of the Act and to pass appropriate orders in accordance with law as expeditiously as possible preferably within a period of four weeks from the date of receipt of this order.

Having regard to the facts and circumstances of the case, there shall be a direction to the respondents not to take any coercive steps against the petitioner on the basis of the impugned proceedings dated 23-09-2004 for a period of six weeks from today.

The Writ Petition is accordingly disposed of. No costs.

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23rd March, 2005

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To

1 The Assistant Commissioner, Provident Fund, Sub Regional Office, 3rd Lane, Krishna Nagar, Guntur, Guntur District.
2 The Regional Provident Fund Commissioner, Barkatpuram, Hyderabad.
3 The Commissioner, Employees Provident Fund, Mayur Bhawan, Cannaught Circus, New Delhi.

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